

RECORDING REQUESTED BY)
AND WHEN RECORDED)
MAIL TO:)

MILPITAS REDEVELOPMENT AGENCY)
455 E. Calaveras Boulevard)
Milpitas, CA 95035-5479)

EXEMPT FROM RECORDING FEES PER)
GOVERNMENT CODE §§6103, 27383)

~~RA6~~
RA6

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

PROPERTY VALUE RESTRICTIONS,
RESALE AGREEMENT AND OPTION TO PURCHASE
(Very Low)

This Resale Restriction Agreement and Option to Purchase (hereinafter "Agreement") is entered into as of this _____ day of June, 2005, by and between the Redevelopment Agency of the City of Milpitas (hereinafter "Agency") and _____ (hereinafter referred to collectively, as the "Buyer").

RECITALS

WHEREAS, Agency provided assistance to _____, the developer (the "Developer") to construct Parc Place, a 58 condominium development reserved for very low, low and moderate households, the Below Market Rate Units ("BMR Units"). The Agency assistance was for those units reserved for very low income households.

WHEREAS, in consideration of Agency assistance for very low income households, Developer entered into a "Property Value Restrictions, Resale Agreement and Option to Purchase" agreement granting to the Agency the right to purchase certain BMR Units before such BMR Units are marketed to the public in order maintain the BMR Units as affordable housing.

WHEREAS, pursuant to the Agency's Right of First Refusal, the Agency purchased a BMR Unit to resell to a very low income household.

WHEREAS, the Agency has provided Buyer with down-payment assistance in the amount of \$98,000, evidenced by a Promissory Note (the "Note") of even date herewith.

WHEREAS, the obligations of Buyer with respect to this Agreement is secured by a Deed of Trust (the "Deed of Trust") of even date herewith.

WHEREAS, Buyer has entered into a "Purchase and Sale Agreement" with the Agency to purchase the BMR Unit upon the condition that Buyer enter into this Agreement to reserve the BMR Unit as affordable housing also, granting to the Agency the Right of First Refusal in the event Buyer wishes to resell the BMR UNIT.

NOW THEREFORE, in consideration of the benefits received by the Buyer, Buyer and Agency agree as follows:

1. The real property, which is the subject of this Agreement, is described more fully described in "Exhibit B" attached here and incorporated by this reference. Said real property ("Residence") is hereby designated as a Below-Market Rate (BMR) unit and shall be subject to the terms and conditions herein set forth. This Agreement runs with the Residence and is binding on the parties hereto and their successors and assigns and on all purchasers of the Residence for that period of time the BMR unit is in place and being used either wholly or partially for residential purposes.

2. The Buyer represents and warrants to the Agency that the financial and other information previously provided to the Developer and the Agency by the Buyer for the purpose of qualifying to purchase the Residence was true and correct at the time it was given and remains true and correct as of the date of this Agreement. Buyer also represents and warrants that Buyer will occupy this Residence as his/her/their principal residence.

3. Right of First Refusal.

Buyer hereby grants to Agency a right to purchase the real property and improvements thereon which are the subject of this Agreement ("Premises") under conditions hereinafter set forth. Agency may designate a governmental or nonprofit organization to exercise said right after notification is given to the first lender. Agency or its designee may assign this right to an individual private buyer who meets the Agency's eligibility qualifications. After the exercise of said right by Agency, its designee or assignee in the manner hereinafter prescribed, Agency, its designee or assignee may assign said right to purchase to any substitute individual private buyer who meets the Agency's eligibility requirements and is approved by the Agency; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

The following transfers of title of any interest therein are not subject to the right of first refusal provisions of this deed: transfer by gift, devise, or inheritance to grantee's spouse or child(ren); taking of title by surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisitions of title or interest therein in conjunction with marriage; provided, however, that these covenants shall continue to run with the title to said Premises following said transfers.

Any transfer of the Residence will be subject to the conditions set forth in Paragraphs 4 through 6 of this Agreement. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any legal, equitable or possessory interest, life estate, land contract, or any lease or rental of the Premises, or any refinancing, encumbrancing, or other hypothecation of the Premises. For purposes of illustration, "any refinancing, encumbrancing, or hypothecation" means that you cannot, for example, place any new mortgage or other trust deed on the Premises or use the Premises for any other types of security for a loan unless you first get the consent of the Agency as required in paragraph 4(b). Any transfer without satisfaction of the conditions of Paragraphs 4 through 6 shall be deemed a "Prohibited transfer" as defined in Paragraph 10 and may result in a declaration of default voiding the transfer.

_____ (initials)

_____ (initials)

4. Notwithstanding the provisions of Paragraph 3, the Buyer may transfer the Residence if the following conditions are satisfied:

a. Sale

- i. The transferee(s) intend(s) to occupy the Residence as his/her/their principal residence within sixty (60) days after the date of transfer, and continue to so occupy the Residence until the transferee properly transfers the Residence, the Note and all obligations under this Agreement to a successor in interest meeting all of the requirements of the applicable Internal Revenue Code Sections and the requirements of the appropriate governmental agencies, including the Agency.
- ii. To the extent required by any senior lender, transferee's indebtedness is eligible for mortgage guaranty insurance covering the loss of up to fifty percent (50%) of the outstanding principal amount of the loan from said lender issued by an issuer licensed to do business in the State of California and approved by said senior lender.
- iii. The maximum qualifying income shall be 50 percent of the area median income for the San Jose Metropolitan Statistical Area (PMSA) as determined by HUD with adjustments for smaller and larger households. Maximum housing cost, including principal payments,

interest, property taxes, homeowners insurance, homeowners dues and mortgage insurance, shall not exceed 30 percent of the qualifying income of the transferee's household. (Qualifying income shall include income of all household members over 18 years of age.)

- vi. The sale price does not exceed the Purchase Price as set forth in Paragraph 6.
- vii. The Transferee(s) shall execute an agreement assuming all of the obligations and restrictions of this Agreement.
- viii. Buyer shall notify Agency in writing of his/her/their intention to place the property for sale. Agency will, within 10 days of the receipt of notification, advise Buyers and any agent engaged by the Buyer for the sale of the Residence, of the Purchase Price as set forth in Paragraph 6.
- ix. The transferee(s) shall not have occupied a home that he/she/they have owned within the 3 years preceding the date of transfer, unless at the time of transfer the Agency gives written approval that the Residence is in a "Targeted Area".

b. Encumbrancing or hypothecation.

- i. Buyer may not further encumber, refinance, or otherwise hypothecate the property to exceed 100% of the Purchase Price as set forth in Paragraph 6.
- ii. Prior to the completion of further encumbrancing, refinancing, or other hypothecation of the Residence, Buyer(s) will notify Agency in writing of the name and address of the lender, and the proposed terms of the further encumbrancing, refinancing, or hypothecation. Agency will, within 10 days of such notification, advise lender of the Purchase Price as set forth in Paragraph 6.

If written approval of the Agency is not given for any transfer of the Residence, the transfer will be a "Prohibited Transfer" and Agency may exercise the options set forth in paragraph 9 of this Agreement.

5. Procedure of Sale.

Whenever Buyer, or Buyer's successors in interest, (collectively "Buyer") of said Premises no longer desires to own said Premises, Buyer shall notify Agency in writing to that effect. Agency upon receipt of said notice, its designee or assignee, shall then have the right to exercise its right to purchase said Premises by delivery of written notice to the Buyer thereof at any time within thirty (30) days from the receipt by Agency of such written notice from Buyer of intent to sell or dispose of the Premises.

The notices provided for herein shall be delivered to the party in person, or by the deposit of postage prepaid certified mail, return receipt requested, to the party at the address in Paragraph 15 below.

If the Agency, its designee or assignee exercises its right to purchase said Premises, close of escrow of said purchase shall be within ninety (90) days of receipt of written notice of Buyer's intent to sell. Said escrow shall be opened upon delivery to Buyer of written notice of the exercise of the option or as soon thereafter as possible. In the event Agency decides to assign the right to purchase provided herein, Agency may postpone opening of escrow until selection of such assignee, or as soon thereafter as possible, provided that the opening of escrow shall occur no later than thirty (30) days after the Buyer is notified of the Agency's exercise of its right to purchase. In the event Agency postpones opening of escrow and is unable to select such an assignee, Agency retains the right to open escrow and complete the purchase provided that such escrow is opened within thirty (30) days and the sales transaction is completed within ninety (90) days from the Buyer's notice of intent to sell.

Buyer shall give written notice to Agency of any intent to terminate the escrow at least ten (10) days prior to such termination. Agency shall retain the right to purchase the unit for an additional period of ten (10) days commencing from the date of termination of escrow.

In the event Agency or its designee do not accept the offer of sale within thirty (30) days of the offer, Buyer may offer the residence for sale to anyone who meets the income criteria contained in Paragraph 4. The Buyer will also be subject to the purchase price provision as contained in Paragraph 6. Buyer shall not offer the property for sale until Agency has approved a purchase price as provided for in Paragraph 6. Buyer (Transferee) will purchase the property subject to this agreement and will be required to execute an agreement under the terms of which the Transferee shall assume the obligations and duties and agree to be bound by the restrictions of this Agreement.

In the event Agency chooses not to exercise its right of first refusal and no qualified buyer is found willing and able to purchase the Residence within forty-five (45) days of receipt by Agency of notice of Buyer's Intent to sell, Agency shall allow Buyer to sell the Residence at market rate to any buyer who shall receive title free and clear of the provisions of this agreement with the proceeds of such sale being distributed as follows:

After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth in Paragraph 6 had Agency exercised its right to purchase the Premises on the date of the sale, shall be paid to the Buyer at close of escrow. The balance of surplus, if any, shall be paid to Agency as liquidated damages to be used by the Agency solely in its affordable housing programs pursuant to the following:

IN THE EVENT THE AGENCY CHOOSES NOT TO EXERCISE ITS RIGHT OF FIRST REFUSAL AND NO QUALIFIED BUYER IS FOUND WILLING AND ABLE TO PURCHASE THE RESIDENCE., THE AGENCY SHALL RETAIN OR RECOVER FROM BUYER THE SURPLUS, IF ANY, AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE BUYER SHOULD SELL THE RESIDENCE AT MARKET RATE TO A BUYER WHO SHALL RECEIVE TITLE FREE AND CLEAR OF THE PROVISIONS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE THE REPLACEMENT COSTS FOR ANOTHER AFFORDABLE UNIT WITHIN OR WITHOUT THE PROJECT AREA, AND THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PROPERTY BY THE AGENCY; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD EXCEED THE AMOUNT OF ANY PROJECTED SURPLUS AS THE TOTAL OF ALL LIQUIDATED DAMAGES AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON BY A COURT OF LAW, THE AGENCY SHALL BE ENTITLED TO SEEK THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE BUYER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

Agency: _____ BUYER: _____]

6. Purchase Price.

Closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow.

The Purchase price of the Premises shall be fixed at the lower amount arrived at one of the following two methods.

a. Appraisal Method.

Agency or its designee shall have an appraisal made by a neutral professional appraiser of its choice to establish the market value. The Buyer may also have an appraisal made by a neutral professional appraiser of Buyer's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be deemed to be the market price. This requirement for an appraisal may be waived by the Agency if, in the exercise of its judgment, the appraised value will be substantially higher than the price determined in subparagraph 6(b) below.

b. Base Price Method.

The purchase price paid by Buyer **\$238,910.00** plus the amount of any prepayment fees paid by the Buyer-Seller at the time said Buyer purchased the Premises (base price), plus an amount, if any, to compensate for any increase in the housing component of the San Francisco-Oakland-San Jose, California or closest metropolitan area Consumer Price Index as published periodically by the United States Department of Housing and Urban Development (hereinafter "the index"). For that purpose, the Index prevailing on the date of the purchase by the Selling Buyer of said Premises shall be compared with the latest Index available on the date of receipt by Agency of notice of intent to sell. The percentage increase in the index, if any, shall be computed and the base price shall be increased by that percentage; provided, however that the price in no event be lower than the purchase price paid by the selling Buyer when he/she/they purchased the Premises.

This adjusted price shall be increased by the appraised value of any substantial structural or permanent fixed improvements approved by Agency.

No price adjustment will be made except upon presentation to the Agency of written documentation of all expenditures made by Buyer for which an adjustment is requested.

Any sale price determined through the use of the method in 6(b) (base price adjusted by Consumer Price Index and value of improvements, applications, fixtures, or equipment added) shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined as follows: Upon receipt of notice of Buyer's intent to sell, Agency or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire or housing codes exist or any other provisions of Municipal Code. In the event deficiencies are noted, the Agency shall obtain estimates to cure the observed deficiencies. The Buyer shall cure the deficiencies in a reasonable manner acceptable to Agency or designee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should Buyer fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of the Agency, its designee or assignee, escrow may be closed, title passed and money paid to the selling Buyer subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by Agency) shall be withheld from the money due the selling Buyer and held by the escrow holder for the purpose of curing such deficiencies. Agency, its designee or assignee shall cause such deficiencies to be cured and upon certification of completion of work by Agency, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Buyer. No other payment shall be due said Buyer.

In no event shall Agency become in any way liable to Buyer, nor become obliged in any manner, by reason of the assignment of its right to purchase, nor shall Agency be in any way obligated or liable to Buyer for any failure of Agency's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale agreement.

Until such time as the Agency's right to purchase is exercised, waived, or expired, the Premises and any interest in title hereto shall not be Transferred (as the word "Transfer" is defined in Paragraph 3 above) to any person or entity except with the express written consent of Agency or its designee, which consent shall be consistent with the Agency's goal of creating, preserving, maintaining, and protecting housing for persons of low and moderate income. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure, the provisions of Paragraph 7 of this instrument shall govern.

7. Default and Foreclosure.

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises shall be recorded by the Agency in the Office of the Recorder of the County of Santa Clara. Any notice of default given pursuant to California Civil Code Section 2924, or as later amended, shall constitute a notice of intent to sell hereunder, and the Agency, or its designee, may exercise its preemptive right to purchase pursuant to the provisions of Paragraph 3 of this instrument, provided, however, that, notwithstanding any language contained in this instrument to the contrary with regard to the rights of the lien holder, the Agency, or its designee or assignee, must complete such purchase no later than the end of the period established by California Civil Code Section 2924 for reinstatement of a monetary default under the deed of trust of mortgage.

In the event of default and foreclosure, the Agency, or its designee or assignee, shall have the same right as the Buyer to cure defaults and redeem the Premises prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Buyer. Nothing herein shall be construed as creating any obligation on the part of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage. In the event that no request for notice is filed, the right to purchase of the Agency, or its designee or assignee, shall run from the date the notice of default is given to the Buyer, and any such purchase must be completed within the period established in this Paragraph 7. In the event the Agency, or its designee or assignee, elects not to exercise its right to purchase upon default, and a foreclosure sale is consummated, any surplus proceeds to which the Buyer may be entitled following foreclosure under California state law shall be paid as follows: After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth above had the Agency exercised its right to purchase the Premises on the date of the foreclosure sale, shall be paid to the Buyer on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the Agency, or its successors or assigns.

In the event that the Agency, or its designee or assignee, does not elect to purchase the Premises pursuant to the provisions of this Paragraph and the Premises is sold through foreclosure, the provisions of Paragraph 12 below pertaining to subordination shall apply.

8. Distribution of Insurance and Condemnation Proceeds.

In the event that the Premises is destroyed or condemned, any surplus proceeds from insurance or condemnation remaining after payment of encumbrances on the Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Buyer would have received under the formula sets forth above had Agency exercised its right to purchase the property on the date of the

destruction, condemnation valuation date, or liquidation, shall be distributed to Buyer, and the balance of such surplus, if any, shall be distributed to Agency or its successors or assigns.

9. Notice of Prohibited Transfer.

Upon receiving notification of a Prohibited Transfer, Agency will give written notice to the Buyer, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the Agency within ten (10) days after the date of the notice or within such further time as Agency determines is necessary to correct the violation Agency may declare a default under this Agreement. Upon the declaration of a default, Agency may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

10. Attorney Fees and Costs.

If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

11. Controlling Agreement.

Buyer covenants that he or she has not, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, Buyer understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

12. Subordination.

This Agreement is subordinate to any deed of trust or mortgage on the premises made by or held by an institutional lender or investor. Any party, and its successors and assigns, receiving title to the Premises through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Agreement.

13. Severability.

If any one or more of the provisions contained in this Agreement shall or any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provision shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

14. Time of the Essence.

Time is of the essence of this entire Agreement.

15. Notices.

All notices required herein shall be sent by certified mail, return receipt requested, to the following address:

AGENCY: Executive Director
 Redevelopment Agency of the City of Milpitas
 455 Calaveras Blvd.
 Milpitas, CA 95035

or at such other address as Agency may subsequently elect following notice in writing of such address to Buyer.

Buyer:

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

PROPERTY BUYER(S):

**REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS**

By: _____

By: _____
Charles Lawson, Executive Director

762956.1

RECORDING REQUESTED BY
AND WHEN RECORDED
MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**PROPERTY VALUE RESTRICTIONS,
RESALE AGREEMENT AND OPTION TO PURCHASE**
(Low Income)

This Resale Restriction Agreement and Option to Purchase (hereinafter "Agreement") is entered into as of this _____ day of June, 2005, by and between the Redevelopment Agency of the City of Milpitas (hereinafter "Agency") and _____ (hereinafter referred to collectively, as the "Buyer").

RECITALS

WHEREAS, Agency provided assistance to _____, the developer (the "Developer") to construct Parc Place, a 58 condominium development reserved for very low, low and moderate households, the Below Market Rate Units ("BMR Units"). The Agency assistance was for those units reserved for very low income households.

WHEREAS, in consideration of Agency assistance for very low income households, Developer entered into a "Property Value Restrictions, Resale Agreement and Option to Purchase" agreement granting to the Agency the right to purchase certain BMR Units before such BMR Units are marketed to the public in order maintain the BMR Units as affordable housing.

WHEREAS, pursuant to the Agency's Right of First Refusal, the Agency purchased a BMR Unit to resell to a low income household.

WHEREAS, the Agency has provided Buyer with down-payment assistance in the amount of \$35,000, evidenced by a Promissory Note (the "Note") of even date herewith.

WHEREAS, the obligations of Buyer with respect to this Agreement is secured by a Deed of Trust (the "Deed of Trust") of even date herewith.

WHEREAS, Buyer has entered into a "Purchase and Sale Agreement" with the Agency to purchase the BMR Unit upon the condition that Buyer enter into this Agreement to reserve the BMR Unit as affordable housing also, granting to the Agency the Right of First Refusal in the event Buyer wishes to resell the BMR UNIT.

NOW THEREFORE, in consideration of the benefits received by the Buyer, Buyer and Agency agree as follows:

1. The real property, which is the subject of this Agreement, is described more fully described in "Exhibit B" attached here and incorporated by this reference. Said real property ("Residence") is hereby designated as a Below-Market Rate (BMR) unit and shall be subject to the terms and conditions herein set forth. This Agreement runs with the Residence and is binding on the parties hereto and their successors and assigns and on all purchasers of the Residence for that period of time the BMR unit is in place and being used either wholly or partially for residential purposes.

2. The Buyer represents and warrants to the Agency that the financial and other information previously provided to the Developer and the Agency by the Buyer for the purpose of qualifying to purchase the Residence was true and correct at the time it was given and remains true and correct as of the date of this Agreement. Buyer also represents and warrants that Buyer will occupy this Residence as his/her/their principal residence.

3. Right of First Refusal.

Buyer hereby grants to Agency a right to purchase the real property and improvements thereon which are the subject of this Agreement ("Premises") under conditions hereinafter set forth. Agency may designate a governmental or nonprofit organization to exercise said right after notification is given to the first lender. Agency or its designee may assign this right to an individual private buyer who meets the Agency's eligibility qualifications. After the exercise of said right by Agency, its designee or assignee in the manner hereinafter prescribed, Agency, its designee or assignee may assign said right to purchase to any substitute individual private buyer who meets the Agency's eligibility requirements and is approved by the Agency; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

The following transfers of title of any interest therein are not subject to the right of first refusal provisions of this deed: transfer by gift, devise, or inheritance to grantee's spouse or child(ren); taking of title by surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisitions of title or interest therein in conjunction with marriage; provided, however, that these covenants shall continue to run with the title to said Premises following said transfers.

Any transfer of the Residence will be subject to the conditions set forth in Paragraphs 4 through 6 of this Agreement. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any legal, equitable or possessory interest, life estate, land contract, or any lease or rental of the Premises, or any refinancing, encumbrancing, or other hypothecation of the Premises. For purposes of illustration, "any refinancing, encumbrancing, or hypothecation" means that you cannot, for example, place any new mortgage or other trust deed on the Premises or use the Premises for any other types of security for a loan unless you first get the consent of the Agency as required in paragraph 4(b). Any transfer without satisfaction of the conditions of Paragraphs 4 through 6 shall be deemed a "Prohibited transfer" as defined in Paragraph 10 and may result in a declaration of default voiding the transfer.

_____ (initials)

_____ (initials)

4. Notwithstanding the provisions of Paragraph 3, the Buyer may transfer the Residence if the following conditions are satisfied:

a. Sale

- i. The transferee(s) intend(s) to occupy the Residence as his/her/their principal residence within sixty (60) days after the date of transfer, and continue to so occupy the Residence until the transferee properly transfers the Residence, the Note and all obligations under this Agreement to a successor in interest meeting all of the requirements of the applicable Internal Revenue Code Sections and the requirements of the appropriate governmental agencies, including the Agency.
- ii. To the extent required by any senior lender, transferee's indebtedness is eligible for mortgage guaranty insurance covering the loss of up to fifty percent (50%) of the outstanding principal amount of the loan from said lender issued by an issuer licensed to do business in the State of California and approved by said senior lender.
- iii. The maximum qualifying income shall be 80 percent of the area median income for the San Jose Metropolitan Statistical Area (PMSA) as determined by HUD with adjustments for smaller and larger households. Maximum housing cost, including principal payments,

interest, property taxes, homeowners insurance, homeowners dues and mortgage insurance, shall not exceed 35 percent of the qualifying income of the transferee's household. (Qualifying income shall include income of all household members over 18 years of age.)

- vi. The sale price does not exceed the Purchase Price as set forth in Paragraph 6.
- vii. The Transferee(s) shall execute an agreement assuming all of the obligations and restrictions of this Agreement.
- viii. Buyer shall notify Agency in writing of his/her/their intention to place the property for sale. Agency will, within 10 days of the receipt of notification, advise Buyers and any agent engaged by the Buyer for the sale of the Residence, of the Purchase Price as set forth in Paragraph 6.
- ix. The transferee(s) shall not have occupied a home that he/she/they have owned within the 3 years preceding the date of transfer, unless at the time of transfer the Agency gives written approval that the Residence is in a "Targeted Area".

b. Encumbrancing or hypothecation.

- i. Buyer may not further encumber, refinance, or otherwise hypothecate the property to exceed 100% of the Purchase Price as set forth in Paragraph 6.
- ii. Prior to the completion of further encumbrancing, refinancing, or other hypothecation of the Residence, Buyer(s) will notify Agency in writing of the name and address of the lender, and the proposed terms of the further encumbrancing, refinancing, or hypothecation. Agency will, within 10 days of such notification, advise lender of the Purchase Price as set forth in Paragraph 6.

If written approval of the Agency is not given for any transfer of the Residence, the transfer will be a "Prohibited Transfer" and Agency may exercise the options set forth in paragraph 9 of this Agreement.

5. Procedure of Sale.

Whenever Buyer, or Buyer's successors in interest, (collectively "Buyer") of said Premises no longer desires to own said Premises, Buyer shall notify Agency in writing to that effect. Agency upon receipt of said notice, its designee or assignee, shall then have the right to exercise its right to purchase said Premises by delivery of written notice to the Buyer thereof at any time within thirty (30) days from the receipt by Agency of such written notice from Buyer of intent to sell or dispose of the Premises.

The notices provided for herein shall be delivered to the party in person, or by the deposit of postage prepaid certified mail, return receipt requested, to the party at the address in Paragraph 15 below.

If the Agency, its designee or assignee exercises its right to purchase said Premises, close of escrow of said purchase shall be within ninety (90) days of receipt of written notice of Buyer's intent to sell. Said escrow shall be opened upon delivery to Buyer of written notice of the exercise of the option or as soon thereafter as possible. In the event Agency decides to assign the right to purchase provided herein, Agency may postpone opening of escrow until selection of such assignee, or as soon thereafter as possible, provided that the opening of escrow shall occur no later than thirty (30) days after the Buyer is notified of the Agency's exercise of its right to purchase. In the event Agency postpones opening of escrow and is unable to select such an assignee, Agency retains the right to open escrow and complete the purchase provided that such escrow is opened within thirty (30) days and the sales transaction is completed within ninety (90) days from the Buyer's notice of intent to sell.

Buyer shall give written notice to Agency of any intent to terminate the escrow at least ten (10) days prior to such termination. Agency shall retain the right to purchase the unit for an additional period of ten (10) days commencing from the date of termination of escrow.

In the event Agency or its designee do not accept the offer of sale within thirty (30) days of the offer, Buyer may offer the residence for sale to anyone who meets the income criteria contained in Paragraph 4. The Buyer will also be subject to the purchase price provision as contained in Paragraph 6. Buyer shall not offer the property for sale until Agency has approved a purchase price as provided for in Paragraph 6. Buyer (Transferee) will purchase the property subject to this agreement and will be required to execute an agreement under the terms of which the Transferee shall assume the obligations and duties and agree to be bound by the restrictions of this Agreement.

In the event Agency chooses not to exercise its right of first refusal and no qualified buyer is found willing and able to purchase the Residence within forty-five (45) days of receipt by Agency of notice of Buyer's Intent to sell, Agency shall allow Buyer to sell the Residence at market rate to any buyer who shall receive title free and clear of the provisions of this agreement with the proceeds of such sale being distributed as follows:

After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth in Paragraph 6 had Agency exercised its right to purchase the Premises on the date of the sale, shall be paid to the Buyer at close of escrow. The balance of surplus, if any, shall be paid to Agency as liquidated damages to be used by the Agency solely in its affordable housing programs pursuant to the following:

IN THE EVENT THE AGENCY CHOOSES NOT TO EXERCISE ITS RIGHT OF FIRST REFUSAL AND NO QUALIFIED BUYER IS FOUND WILLING AND ABLE TO PURCHASE THE RESIDENCE., THE AGENCY SHALL RETAIN OR RECOVER FROM BUYER THE SURPLUS, IF ANY, AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE BUYER SHOULD SELL THE RESIDENCE AT MARKET RATE TO A BUYER WHO SHALL RECEIVE TITLE FREE AND CLEAR OF THE PROVISIONS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE THE REPLACEMENT COSTS FOR ANOTHER AFFORDABLE UNIT WITHIN OR WITHOUT THE PROJECT AREA, AND THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PROPERTY BY THE AGENCY; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD EXCEED THE AMOUNT OF ANY PROJECTED SURPLUS AS THE TOTAL OF ALL LIQUIDATED DAMAGES AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON BY A COURT OF LAW, THE AGENCY SHALL BE ENTITLED TO SEEK THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE BUYER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

Agency: _____ BUYER: _____]

6. Purchase Price.

Closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of such escrow.

The Purchase price of the Premises shall be fixed at the lower amount arrived at one of the following two methods.

a. Appraisal Method.

Agency or its designee shall have an appraisal made by a neutral professional appraiser of its choice to establish the market value. The Buyer may also have an appraisal made by a neutral professional appraiser of Buyer's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be deemed to be the market price. This requirement for an appraisal may be waived by the Agency if, in the exercise of its judgment, the appraised value will be substantially higher than the price determined in subparagraph 6(b) below.

b. Base Price Method.

The purchase price paid by Buyer **\$238,910.00** plus the amount of any prepayment fees paid by the Buyer-Seller at the time said Buyer purchased the Premises (base price), plus an amount, if any, to compensate for any increase in the housing component of the San Francisco-Oakland-San Jose, California or closest metropolitan area Consumer Price Index as published periodically by the United States Department of Housing and Urban Development (hereinafter "the index"). For that purpose, the Index prevailing on the date of the purchase by the Selling Buyer of said Premises shall be compared with the latest Index available on the date of receipt by Agency of notice of intent to sell. The percentage increase in the index, if any, shall be computed and the base price shall be increased by that percentage; provided, however that the price in no event be lower than the purchase price paid by the selling Buyer when he/she/they purchased the Premises.

This adjusted price shall be increased by the appraised value of any substantial structural or permanent fixed improvements approved by Agency.

No price adjustment will be made except upon presentation to the Agency of written documentation of all expenditures made by Buyer for which an adjustment is requested.

Any sale price determined through the use of the method in 6(b) (base price adjusted by Consumer Price Index and value of improvements, applications, fixtures, or equipment added) shall be adjusted by decreasing said price by an amount to compensate for deferred maintenance costs, which amount shall be determined as follows: Upon receipt of notice of Buyer's intent to sell, Agency or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire or housing codes exist or any other provisions of Municipal Code. In the event deficiencies are noted, the Agency shall obtain estimates to cure the observed deficiencies. The Buyer shall cure the deficiencies in a reasonable manner acceptable to Agency or designee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should Buyer fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of the Agency, its designee or assignee, escrow may be closed, title passed and money paid to the selling Buyer subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by Agency) shall be withheld from the money due the selling Buyer and held by the escrow holder for the purpose of curing such deficiencies. Agency, its designee or assignee shall cause such deficiencies to be cured and upon certification of completion of work by Agency, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Buyer. No other payment shall be due said Buyer.

In no event shall Agency become in any way liable to Buyer, nor become obliged in any manner, by reason of the assignment of its right to purchase, nor shall Agency be in any way obligated or liable to Buyer for any failure of Agency's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale agreement.

Until such time as the Agency's right to purchase is exercised, waived, or expired, the Premises and any interest in title hereto shall not be Transferred (as the word "Transfer" is defined in Paragraph 3 above) to any person or entity except with the express written consent of Agency or its designee, which consent shall be consistent with the Agency's goal of creating, preserving, maintaining, and protecting housing for persons of low and moderate income. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure, the provisions of Paragraph 7 of this instrument shall govern.

7. Default and Foreclosure.

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises shall be recorded by the Agency in the Office of the Recorder of the County of Santa Clara. Any notice of default given pursuant to California Civil Code Section 2924, or as later amended, shall constitute a notice of intent to sell hereunder, and the Agency, or its designee, may exercise its preemptive right to purchase pursuant to the provisions of Paragraph 3 of this instrument, provided, however, that, notwithstanding any language contained in this instrument to the contrary with regard to the rights of the lien holder, the Agency, or its designee or assignee, must complete such purchase no later than the end of the period established by California Civil Code Section 2924 for reinstatement of a monetary default under the deed of trust of mortgage.

In the event of default and foreclosure, the Agency, or its designee or assignee, shall have the same right as the Buyer to cure defaults and redeem the Premises prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Buyer. Nothing herein shall be construed as creating any obligation on the part of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage. In the event that no request for notice is filed, the right to purchase of the Agency, or its designee or assignee, shall run from the date the notice of default is given to the Buyer, and any such purchase must be completed within the period established in this Paragraph 7. In the event the Agency, or its designee or assignee, elects not to exercise its right to purchase upon default, and a foreclosure sale is consummated, any surplus proceeds to which the Buyer may be entitled following foreclosure under California state law shall be paid as follows: After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth above had the Agency exercised its right to purchase the Premises on the date of the foreclosure sale, shall be paid to the Buyer on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the Agency, or its successors or assigns.

In the event that the Agency, or its designee or assignee, does not elect to purchase the Premises pursuant to the provisions of this Paragraph and the Premises is sold through foreclosure, the provisions of Paragraph 12 below pertaining to subordination shall apply.

8. Distribution of Insurance and Condemnation Proceeds.

In the event that the Premises is destroyed or condemned, any surplus proceeds from insurance or condemnation remaining after payment of encumbrances on the Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Buyer would have received under the formula sets forth above had Agency exercised its right to purchase the property on the date of the

destruction, condemnation valuation date, or liquidation, shall be distributed to Buyer, and the balance of such surplus, if any, shall be distributed to Agency or its successors or assigns.

9. Notice of Prohibited Transfer.

Upon receiving notification of a Prohibited Transfer, Agency will give written notice to the Buyer, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the Agency within ten (10) days after the date of the notice or within such further time as Agency determines is necessary to correct the violation Agency may declare a default under this Agreement. Upon the declaration of a default, Agency may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

10. Attorney Fees and Costs.

If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

11. Controlling Agreement.

Buyer covenants that he or she has not, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, Buyer understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

12. Subordination.

This Agreement is subordinate to any deed of trust or mortgage on the premises made by or held by an institutional lender or investor. Any party, and its successors and assigns, receiving title to the Premises through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Agreement.

13. Severability.

If any one or more of the provisions contained in this Agreement shall or any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provision shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

14. Time of the Essence.

Time is of the essence of this entire Agreement.

15. Notices.

All notices required herein shall be sent by certified mail, return receipt requested, to the following address:

AGENCY: Executive Director
 Redevelopment Agency of the City of Milpitas
 455 Calaveras Blvd.
 Milpitas, CA 95035

or at such other address as Agency may subsequently elect following notice in writing of such address to Buyer.

Buyer:

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

PROPERTY BUYER(S):

**REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS**

By: _____

By: _____
Charles Lawson, Executive Director

761544v2

RECORDING REQUESTED BY)
AND WHEN RECORDED)
MAIL TO:)
)
MILPITAS REDEVELOPMENT AGENCY)
455 E. Calaveras Boulevard)
Milpitas, CA 95035-5479)
)
EXEMPT FROM RECORDING FEES PER)
GOVERNMENT CODE §§6103, 27383)

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**PROPERTY VALUE RESTRICTIONS,
RESALE AGREEMENT AND OPTION TO PURCHASE**
(Moderate Income)

This Resale Restriction Agreement and Option to Purchase (hereinafter "Agreement") is entered into as of this _____ day of June, 2005, by and between the Redevelopment Agency of the City of Milpitas (hereinafter "Agency") and _____ (hereinafter referred to collectively, as the "Buyer").

RECITALS

WHEREAS, Agency provided assistance to _____, the developer (the "Developer") to construct Parc Place, a 58 condominium development reserved for very low, low and moderate households, the Below Market Rate Units ("BMR Units"). The Agency assistance was for those units reserved for very low income households.

WHEREAS, in consideration of Agency assistance for very low income households, Developer entered into a "Property Value Restrictions, Resale Agreement and Option to Purchase" agreement granting to the Agency the right to purchase certain BMR Units before such BMR Units are marketed to the public in order maintain the BMR Units as affordable housing.

WHEREAS, pursuant to the Agency's Right of First Refusal, the Agency purchased a BMR Unit to resell to a moderate income household.

WHEREAS, the obligations of Buyer with respect to this Agreement is secured by a Deed of Trust (the "Deed of Trust") of even date herewith.

WHEREAS, Buyer has entered into a "Purchase and Sale Agreement" with the Agency to purchase the BMR Unit upon the condition that Buyer enter into this Agreement to reserve the BMR Unit as affordable housing also, granting to the Agency the Right of First Refusal in the event Buyer wishes to resell the BMR UNIT.

NOW THEREFORE, in consideration of the benefits received by the Buyer, Buyer and Agency agree as follows:

1. The real property, which is the subject of this Agreement, is described more fully described in "Exhibit B" attached here and incorporated by this reference. Said real property ("Residence") is hereby designated as a Below-Market Rate (BMR) unit and shall be subject to the terms and conditions herein set forth. This Agreement runs with the Residence and is binding on the parties hereto and their successors and assigns and on all purchasers of the Residence for that period of time the BMR unit is in place and being used either wholly or partially for residential purposes.

2. The Buyer represents and warrants to the Agency that the financial and other information previously provided to the Developer and the Agency by the Buyer for the purpose of qualifying to purchase the Residence was true and correct at the time it was given and remains true and correct as of the date of this Agreement. Buyer also represents and warrants that Buyer will occupy this Residence as his/her/their principal residence.

3. Right of First Refusal.

Buyer hereby grants to Agency a right to purchase the real property and improvements thereon which are the subject of this Agreement ("Premises") under conditions hereinafter set forth. Agency may designate a governmental or nonprofit organization to exercise said right after notification is given to the first lender. Agency or its designee may assign this right to an individual private buyer who meets the Agency's eligibility qualifications. After the exercise of said right by Agency, its designee or assignee in the manner hereinafter prescribed, Agency, its designee or assignee may assign said right to purchase to any substitute individual private buyer who meets the Agency's eligibility requirements and is approved by the Agency; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Any attempt to transfer title or any interest therein in violation of these covenants shall be void.

The following transfers of title of any interest therein are not subject to the right of first refusal provisions of this deed: transfer by gift, devise, or inheritance to grantee's spouse or child(ren); taking of title by surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisitions of title or interest therein in conjunction with marriage; provided, however, that these covenants shall continue to run with the title to said Premises following said transfers.

Any transfer of the Residence will be subject to the conditions set forth in Paragraphs 4 through 6 of this Agreement. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any legal, equitable or possessory interest, life estate, land contract, or any lease or rental of the Premises, or any refinancing, encumbrancing, or other hypothecation of the Premises. For purposes of illustration,

"any refinancing, encumbrancing, or hypothecation" means that you cannot, for example, place any new mortgage or other trust deed on the Premises or use the Premises for any other types of security for a loan unless you first get the consent of the Agency as required in paragraph 4(b). Any transfer without satisfaction of the conditions of Paragraphs 4 through 6 shall be deemed a "Prohibited transfer" as defined in Paragraph 10 and may result in a declaration of default voiding the transfer.

_____ (initials)

_____ (initials)

4. Notwithstanding the provisions of Paragraph 3, the Buyer may transfer the Residence if the following conditions are satisfied:

a. Sale

- i. The transferee(s) intend(s) to occupy the Residence as his/her/their principal residence within sixty (60) days after the date of transfer, and continue to so occupy the Residence until the transferee properly transfers the Residence and all obligations under this Agreement to a successor in interest meeting all of the requirements of the applicable Internal Revenue Code Sections and the requirements of the appropriate governmental agencies, including the Agency.
- ii. To the extent required by any senior lender, transferee's indebtedness is eligible for mortgage guaranty insurance covering the loss of up to fifty percent (50%) of the outstanding principal amount of the loan from said lender issued by an issuer licensed to do business in the State of California and approved by said senior lender.
- iii. The maximum qualifying income shall be 120 percent of the area median income for the San Jose Metropolitan Statistical Area (PMSA) as determined by HUD with adjustments for smaller and larger households. Maximum housing cost, including principal payments, interest, property taxes, homeowners insurance, homeowners dues and mortgage insurance, shall not exceed 45 percent of the qualifying income of the transferee's household. (Qualifying income shall include

income of all household members over 18 years of age.)

- vi. The sale price does not exceed the Purchase Price as set forth in Paragraph 6.
- vii. The Transferee(s) shall execute an agreement assuming all of the obligations and restrictions of this Agreement.
- viii. Buyer shall notify Agency in writing of his/her/their intention to place the property for sale. Agency will, within 10 days of the receipt of notification, advise Buyers and any agent engaged by the Buyer for the sale of the Residence, of the Purchase Price as set forth in Paragraph 6.
- ix. The transferee(s) shall not have occupied a home that he/she/they have owned within the 3 years preceding the date of transfer, unless at the time of transfer the Agency gives written approval that the Residence is in a "Targeted Area".

b. Encumbrancing or hypothecation.

- i. Buyer may not further encumber, refinance, or otherwise hypothecate the property to exceed 100% of the Purchase Price as set forth in Paragraph 6.
- ii. Prior to the completion of further encumbrancing, refinancing, or other hypothecation of the Residence, Buyer(s) will notify Agency in writing of the name and address of the lender, and the proposed terms of the further encumbrancing, refinancing, or hypothecation. Agency will, within 10 days of such notification, advise lender of the Purchase Price as set forth in Paragraph 6.

If written approval of the Agency is not given for any transfer of the Residence, the transfer will be a "Prohibited Transfer" and Agency may exercise the options set forth in paragraph 9 of this Agreement.

5. Procedure of Sale.

Whenever Buyer, or Buyer's successors in interest, (collectively "Buyer") of said Premises no longer desires to own said Premises, Buyer shall notify Agency in writing to that effect. Agency upon receipt of said notice, its designee or assignee, shall then have the right to exercise its right to purchase said Premises by delivery of written notice to the Buyer thereof at any time within thirty (30) days from the receipt by Agency of such written notice from Buyer of intent to sell or dispose of the Premises.

The notices provided for herein shall be delivered to the party in person, or by the deposit of postage prepaid certified mail, return receipt requested, to the party at the address in Paragraph 15 below.

If the Agency, its designee or assignee exercises its right to purchase said Premises, close of escrow of said purchase shall be within ninety (90) days of receipt of written notice of Buyer's intent to sell. Said escrow shall be opened upon delivery to Buyer of written notice of the exercise of the option or as soon thereafter as possible. In the event Agency decides to assign the right to purchase provided herein, Agency may postpone opening of escrow until selection of such assignee, or as soon thereafter as possible, provided that the opening of escrow shall occur no later than thirty (30) days after the Buyer is notified of the Agency's exercise of its right to purchase. In the event Agency postpones opening of escrow and is unable to select such an assignee, Agency retains the right to open escrow and complete the purchase provided that such escrow is opened within thirty (30) days and the sales transaction is completed within ninety (90) days from the Buyer's notice of intent to sell.

Buyer shall give written notice to Agency of any intent to terminate the escrow at least ten (10) days prior to such termination. Agency shall retain the right to purchase the unit for an additional period of ten (10) days commencing from the date of termination of escrow.

In the event Agency or its designee do not accept the offer of sale within thirty (30) days of the offer, Buyer may offer the residence for sale to anyone who meets the income criteria contained in Paragraph 4. The Buyer will also be subject to the purchase price provision as contained in Paragraph 6. Buyer shall not offer the property for sale until Agency has approved a purchase price as provided for in Paragraph 6. Buyer (Transferee) will purchase the property subject to this agreement and will be required to execute an agreement under the terms of which the Transferee shall assume the obligations and duties and agree to be bound by the restrictions of this Agreement.

In the event Agency chooses not to exercise its right of first refusal and no qualified buyer is found willing and able to purchase the Residence within forty-five (45) days of receipt by Agency of notice of Buyer's Intent to sell, Agency shall allow Buyer to sell the Residence at market rate to any buyer who shall receive title free and clear of the provisions of this agreement with the proceeds of such sale being distributed as follows:

After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth in Paragraph 6 had Agency exercised its right to purchase the Premises on the date of the sale, shall be paid to the Buyer at close of escrow. The balance of surplus, if any, shall be paid to Agency as liquidated damages to be used by the Agency solely in its affordable housing programs pursuant to the following:

IN THE EVENT THE AGENCY CHOOSES NOT TO EXERCISE ITS RIGHT OF FIRST REFUSAL AND NO QUALIFIED BUYER IS FOUND WILLING AND ABLE TO PURCHASE THE RESIDENCE., THE AGENCY SHALL RETAIN OR RECOVER FROM BUYER THE SURPLUS, IF ANY, AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE BUYER SHOULD SELL THE RESIDENCE AT MARKET RATE TO A BUYER WHO SHALL RECEIVE TITLE FREE AND CLEAR OF THE PROVISIONS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE THE REPLACEMENT COSTS FOR ANOTHER AFFORDABLE UNIT WITHIN OR WITHOUT THE PROJECT AREA, AND THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PROPERTY BY THE AGENCY; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD EXCEED THE AMOUNT OF ANY PROJECTED SURPLUS AS THE TOTAL OF ALL LIQUIDATED DAMAGES AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON BY A COURT OF LAW, THE AGENCY SHALL BE ENTITLED TO SEEK THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE BUYER AND THE AGENCY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

Agency: _____ BUYER: _____]

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Agency or its designee shall have an appraisal made by a neutral professional appraiser of its choice to establish the market value. The Buyer may also have an appraisal made by a neutral professional appraiser of Buyer's choice to establish the market value. If agreement cannot be reached, the average of the two appraisals shall be deemed to be the market price. This requirement for an appraisal may be waived by the Agency if, in the exercise of its judgment, the appraised value will be substantially higher than the price determined in subparagraph 6(b) below.

b. Base Price Method.

The purchase price paid by Buyer **\$238,910.00** plus the amount of any prepayment fees paid by the Buyer-Seller at the time said Buyer purchased the Premises (base price), plus an amount, if any, to compensate for any increase in the housing component of the San Francisco-Oakland-San Jose, California or closest metropolitan area Consumer Price Index as published periodically by the United States Department of Housing and Urban Development (hereinafter "the index"). For that purpose, the Index prevailing on the date of the purchase by the Selling Buyer of said Premises shall be compared with the latest Index available on the date of receipt by Agency of notice of intent to sell. The percentage increase in the index, if any, shall be computed and the base price shall be increased by that percentage; provided, however that the price in no event be lower than the purchase price paid by the selling Buyer when he/she/they purchased the Premises.

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No price adjustment will be made except upon presentation to the Agency of written documentation of all expenditures made by Buyer for which an adjustment is requested.

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follows: Upon receipt of notice of Buyer's intent to sell, Agency or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire or housing codes exist or any other provisions of Municipal Code. In the event deficiencies are noted, the Agency shall obtain estimates to cure the observed deficiencies. The Buyer shall cure the deficiencies in a reasonable manner acceptable to Agency or designee within sixty (60) days of being notified of the results of the inspection, but in no event later than close of escrow. Should Buyer fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of the Agency, its designee or assignee, escrow may be closed, title passed and money paid to the selling Buyer subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by Agency) shall be withheld from the money due the selling Buyer and held by the escrow holder for the purpose of curing such deficiencies. Agency, its designee or assignee shall cause such deficiencies to be cured and upon certification of completion of work by Agency, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the selling Buyer. No other payment shall be due said Buyer.

In no event shall Agency become in any way liable to Buyer, nor become obliged in any manner, by reason of the assignment of its right to purchase, nor shall Agency be in any way obligated or liable to Buyer for any failure of Agency's assignee to consummate a purchase of the premises or to comply with the terms of any purchase and sale agreement.

Until such time as the Agency's right to purchase is exercised, waived, or expired, the Premises and any interest in title hereto shall not be Transferred (as the word "Transfer" is defined in Paragraph 3 above) to any person or entity except with the express written consent of Agency or its designee, which consent shall be consistent with the Agency's goal of creating, preserving, maintaining, and protecting housing for persons of low and moderate income. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing; however, in the event of foreclosure or transfer by deed in lieu of foreclosure, the provisions of Paragraph 7 of this instrument shall govern.

7. Default and Foreclosure.

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering said premises shall be recorded by the Agency in the Office of the Recorder of the County of Santa Clara. Any notice of default given pursuant to California Civil Code Section 2924, or as later amended, shall constitute a notice of intent to sell hereunder, and the Agency, or its designee, may exercise its preemptive right to purchase pursuant to the provisions of Paragraph 3 of this instrument, provided, however, that, notwithstanding any language contained in this instrument to the contrary with regard to the rights of the lien holder, the Agency, or its designee or assignee, must complete such purchase no later than the end of the period established by California Civil Code Section 2924 for reinstatement of a monetary default under the deed of trust of mortgage.

In the event of default and foreclosure, the Agency, or its designee or assignee, shall have the same right as the Buyer to cure defaults and redeem the Premises prior to foreclosure sale. Such redemption shall be subject to the same fees, charges and penalties which would otherwise be assessed against the Buyer. Nothing herein shall be construed as creating any obligation on the part of the Agency to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage. In the event that no request for notice is filed, the right to purchase of the Agency, or its designee or assignee, shall run from the date the notice of default is given to the Buyer, and any such purchase must be completed within the period established in this Paragraph 7. In the event the Agency, or its designee or assignee, elects not to exercise its right to purchase upon default, and a foreclosure sale is consummated, any surplus proceeds to which the Buyer may be entitled following foreclosure under California state law shall be paid as follows: After any required payment of encumbrances, that portion of surplus, if any, up to but not exceeding the net amount that the Buyer would have received after any required payment of encumbrances under the formula set forth above had the Agency exercised its right to purchase the Premises on the date of the foreclosure sale, shall be paid to the Buyer on the date of the foreclosure sale; the balance of surplus, if any, shall be paid to the Agency, or its successors or assigns.

In the event that the Agency, or its designee or assignee, does not elect to purchase the Premises pursuant to the provisions of this Paragraph and the Premises is sold through foreclosure, the provisions of Paragraph 12 below pertaining to subordination shall apply.

8. Distribution of Insurance and Condemnation Proceeds.

In the event that the Premises is destroyed or condemned, any surplus proceeds from insurance or condemnation remaining after payment of encumbrances on the Premises shall be distributed as follows: That portion of the surplus up to but not to exceed the net amount that Buyer would have received under the formula sets forth above had Agency exercised its right to purchase the property on the date of the

destruction, condemnation valuation date, or liquidation, shall be distributed to Buyer, and the balance of such surplus, if any, shall be distributed to Agency or its successors or assigns.

9. Notice of Prohibited Transfer.

Upon receiving notification of a Prohibited Transfer, Agency will give written notice to the Buyer, specifying the nature of the Prohibited Transfer. If the violation is not corrected to the satisfaction of the Agency within ten (10) days after the date of the notice or within such further time as Agency determines is necessary to correct the violation Agency may declare a default under this Agreement. Upon the declaration of a default, Agency may apply to a court of competent jurisdiction for specific performance of the Agreement, for an injunction prohibiting a proposed sale or transfer in violation of this Agreement, for a declaration that the Prohibited Transfer is void, or for any such other relief as may be appropriate.

10. Attorney Fees and Costs.

If any action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

11. Controlling Agreement.

Buyer covenants that he or she has not, and will not execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that in any event, Buyer understands and agrees that this Agreement shall control the rights and obligations between and among the parties and respective successors.

12. Subordination.

This Agreement is subordinate to any deed of trust or mortgage on the premises made by or held by an institutional lender or investor. Any party, and its successors and assigns, receiving title to the Premises through a trustee's sale, a judicial foreclosure sale or deed in lieu of foreclosure of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of this Agreement.

13. Severability.

If any one or more of the provisions contained in this Agreement shall or any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provision shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

14. Time of the Essence.

Time is of the essence of this entire Agreement.

15. Notices.

All notices required herein shall be sent by certified mail, return receipt requested, to the following address:

AGENCY: Executive Director
 Redevelopment Agency of the City of Milpitas
 455 Calaveras Blvd.
 Milpitas, CA 95035

or at such other address as Agency may subsequently elect following notice in writing of such address to Buyer.

Buyer:

IN WITNESS THEREOF, the parties have executed this Agreement as of the date first written above.

PROPERTY BUYER(S):

**REDEVELOPMENT AGENCY OF
THE CITY OF MILPITAS**

By: _____

By: _____
Charles Lawson, Executive Director

761544v2



**CALIFORNIA HOUSING FINANCE AGENCY
SUBORDINATE LENDER/CalHFA
SUBORDINATE FINANCING AND RESALE CONTROL AGREEMENT**

This Subordinate Lender/CalHFA Subordinate Financing and Resale Control Agreement (the "Agreement") is made and entered into on June 10, 2005, by and between the California Housing Finance Agency (the "CalHFA") a public instrumentality and a political subdivision of the State of California, and City Of Milpitas (the "Subordinate Lender").

RECITALS

A. CalHFA intends to make a commitment to provide below-market rate mortgage financing (the "CalHFA Loan(s)") to facilitate the acquisition by low- and moderate-income borrowers (the "Borrower(s)") of single family homes located in Milpitas, Santa Clara County, California and more particularly described as follows (the "Home(s)"): The incorporated area of the city of Milpitas

B. Subordinate Lender intends to provide additional financial assistance for such acquisition and/or to impose restrictions on the transfer of the Homes as provided in those certain documents attached hereto and incorporated herein by this reference (collectively the "Subordinate Lender Documents").

C. In order to ensure that the Subordinate Lender Documents (1) are consistent with certain federal tax law requirements relating to CalHFA's tax exempt bond financed loans, and (2) are subordinate to the CalHFA Loan(s), the parties hereto have entered into this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. *Subordinate Lender Documents.* The Subordinate Lender represents and warrants that all of the financing documents and transfer restrictions which will be imposed on the Borrowers or the Homes by Subordinate Lender or otherwise in connection with the provision of its financial assistance or imposition of its transfer restrictions are included in the documents described herein as the "Subordinate Lender Documents".

2. *Representations to Bond Counsel.* The Subordinate Lender represents and warrants that any factual representations made to CalHFA's bond counsel in connection with the Subordinate Lender Documents are and will be accurate and complete to the best of its knowledge.

3. *Amendment.* The Subordinate Lender Documents shall not be revised or amended without the prior written consent of CalHFA.

4. *Subordination.* The Subordinate Lender Documents shall be subordinate to the CalHFA Loan(s) and foreclosure of any CalHFA deed of trust shall extinguish the Subordinate Lender Documents as encumbrances on the Home being foreclosed. The Subordinate Lender shall take all actions and execute all documents as necessary to cause such subordination and enable CalHFA to obtain title insurance which insures the CalHFA Loans(s) as superior to the Subordinate Lender Documents.

5. *Attorney Fees, Remedies.* In any proceeding to enforce this Agreement, the prevailing party shall be entitled to receive from the other party reasonable attorneys fees and costs. In the event of the inaccuracy or breach of any of the representations, warranties or agreements of Subordinate Lender contained herein CalHFA may pursue any remedies available at law or in equity to redress any damage resulting to CalHFA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

CALIFORNIA HOUSING FINANCE AGENCY

SUBORDINATE LENDER

By: _____

By:  _____

Name: _____

Name: Charles Lawson

Title: _____

Title: Interim City Manager